

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MISTER SOFTEE, INC.,

Plaintiff,

v.

DANNY'S SOFT SERVE CORP., et al.,

Defendants.

Civil No. ~~08~~-3018 (AET)

ORDER OF JUDGMENT

THOMPSON, U.S.D.J.

This matter comes before the Court upon the Motion for Default Judgment [9] of Plaintiff Mister Softee, Inc., against Defendant Danny's Soft Serve Corp.; and the Court having considered Plaintiff's unopposed submissions without oral argument pursuant to Fed. R. Civ. P. 78; and pursuant to Fed. R. Civ. 55; and

IT APPEARING to the Court that Defendant was served with a copy of the summons and complaint on or about June 18, 2008; and it further

APPEARING to the Court that the time to file an answer has expired; and it further

APPEARING to the Court that Defendant has not answered the complaint or otherwise pleaded; and it further

APPEARING to the Court that Plaintiff's attorney Paul Cianci has submitted an

Affirmation In Support of Default dated August 20, 2008, which provides that Defendant is a corporation, and therefore not an infant, military or an incompetent person; and it further

APPEARING to the Court that, on August 21, 2008, the Clerk entered default as to Defendant for failure to plead; and it further

APPEARING that "before granting a default judgment, the Court must first ascertain whether the unchallenged facts constitute a legitimate cause of action, since a party in default does not admit mere conclusions of law," Directv v. Asher, No. 03-1969, 2006 U.S. Dist. LEXIS 14027, at *3 (D.N.J. Mar. 14, 2006); and it further

APPEARING that the Court finds that Plaintiff has established a legitimate cause of action of trademark infringement, and would be prejudiced if no default judgment were entered, and that Defendant has not answered or asserted any defense, meritorious or otherwise, see Livingston Powdered Metal, Inc. v. NLRB, 669 F.2d 133, 136 (3d Cir. 1982); and it further

APPEARING that although the Court should accept as true the well-pleaded factual allegations of the Complaint, the Court need not accept the moving party's legal conclusions or allegations relating to the amount of damages, see Comdyne I, Inc. v. Corbin, 908 F.2d 1142, 1149 (3d Cir.1990); and for good cause shown,

IT IS on this 29th day of September, 2008,

ORDERED that Plaintiff Mister Softee, Inc.'s Motion for Default Judgment [9] is GRANTED against Danny's Soft Serve Corp.; and it is further

ORDERED that the Plaintiff shall submit affidavits and supporting materials to this Court within twenty-one (21) days to address the issue of damages, costs, and attorney's fees, pursuant to Fed. R. Civ. P. 55(b)(2); and it is further

ORDERED that Plaintiffs shall serve a copy of this Order upon the Defendant named herein.

s/ Anne E. Thompson
ANNE E. THOMPSON, U.S.D.J.